

APPEAL NO. 022272  
FILED OCTOBER 22, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on August 9, 2002. The hearing officer resolved the disputed issues by deciding that the agreement signed by the parties and their attorneys on December 10, 2001, remains in effect; and that the respondent's (claimant) average weekly wage (AWW) is \$319.90. The appellant (carrier) appealed, arguing that the determinations of the hearing officer are erroneous and against the great weight and preponderance of the evidence. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The parties signed a benefit dispute agreement dated December 10, 2001, in which the parties agreed that the claimant's AWW is \$319.90; that the claimant is not entitled to supplemental income benefits (SIBs) for the eighth and ninth quarters; and that the claimant is entitled to SIBs for the tenth quarter. Subsequently the claimant seeks additional temporary income benefits due to under payment based on the AWW agreed to by the parties on December 10, 2001. The carrier appeals, arguing that the agreed AWW of \$319.90 was to be applied prospectively only. The hearing officer did not err in determining not to set aside the parties' benefit dispute agreement of December 10, 2001.

The carrier argues that the hearing officer's opinion rests on a premise that there may not be a change in the AWW during a pending claim. We note that previous Appeals Panel decisions have upheld an agreement involving the AWW changing after a certain period of time, see Texas Workers' Compensation Commission Appeal No. 971076, decided July 23, 1997. However, there was testimony at the CCH that the carrier had previously entered into agreements in other cases where the change in AWW was specified as applying to a specific time period and acknowledged that in the present case no such limitation was included in the agreement.

The carrier requested that the agreement be set aside. Section 410.030(a) provides that an agreement signed in accordance with Section 410.029 is binding on the insurance carrier through the conclusion of all matters relating to the claim, unless the Texas Workers' Compensation Commission or a court, on a finding of fraud, newly discovered evidence, or other good and sufficient cause, relieves the insurance carrier of the effect of the agreement.

Whether a good and sufficient cause exists is to be determined from the facts as they stand at the time the party seeks to set aside the agreement. Texas Workers' Compensation Commission Appeal No. 950625, decided June 5, 1995. We have also

held that a finding regarding the existence of good cause is reviewed by the Appeals Panel under an abuse of discretion standard, that is, whether the hearing officer looked to appropriate guiding rules or principles. Texas Workers' Compensation Commission Appeal No. 951812, decided December 4, 1995; Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). We do not find the hearing officer's ruling to be an abuse of discretion, nor can we say that the hearing officer acted without reference to guiding rules and principles.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge